

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

KATHRYN LISTER,

Plaintiff,

v.

CIV. NO. 13-570 GBW

CAROLYN W. COLVIN, *Acting
Commissioner of the Social Security
Administration,*

Defendant.

ORDER GRANTING MOTION FOR ATTORNEY FEES

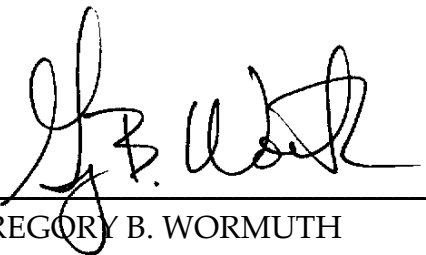
On August 1, 2014, this Court granted Plaintiff's Motion to Reverse and Remand the Commissioner's denial of social security disability benefits and remanded this action to the Commissioner. *Doc. 25*. Plaintiff filed the instant Motion for Fees Under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412, on September 12, 2014. *Docs. 26, 27*.

The EAJA states that "a court shall award to a prevailing party . . . fees and other expenses . . . incurred by that party in any civil action (other than cases sounding in tort), including proceedings for judicial review of agency action[.]" 28 U.S.C. § 2412(d)(1)(A). Plaintiff has requested \$5,280.80 in EAJA fees for 28.7 hours of work bringing this case in federal court, at a rate of \$184 per hour. *Doc. 27, Ex. A*. Defendant does not object to the amounts requested by Plaintiff, but states that the award should

be made payable directly to Plaintiff. *See Astrue v. Ratliff*, 130 S. Ct. 2521 (2010) (EAJA fees are paid to the prevailing party, not the attorney).

IT IS THEREFORE ORDERED that Plaintiff's Motion for Fees Under the Equal Access to Justice Act, (*doc. 26*), is GRANTED. Plaintiff is hereby awarded \$5,280.80 in EAJA fees, payable to Plaintiff.

IT IS FURTHER ORDERED that, if Plaintiff's counsel receives attorney's fees under both the EAJA and 42 U.S.C. § 406(b) of the Social Security Act, Plaintiff's counsel shall refund the smaller award pursuant to *Weakley v. Bowen*, 803 F.2d 575, 580 (10th Cir. 1986).



GREGORY B. WORMUTH
UNITED STATES MAGISTRATE JUDGE
Presiding by consent